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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,  
f/k/a GENERAL MOTORS CORP., et al.  
Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

December 8, 2011  
9:35 AM

B E F O R E:  
HON. ROBERT E. GERBER  
U.S. BANKRUPTCY JUDGE

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Motion of the Revitalizing Auto Communities Environmental  
Response Trust For An Order Pursuant to 11 U.S.C. Sections 105  
and 1142 To Enforce Debtors' Payment Obligation Under the  
Second Amended Joint Chapter 11 Plan And The Confirmation Order

Transcribed by: Penina Wolicki

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BY: MICHAEL V. BLUMENTHAL, ESQ.

1 P R O C E E D I N G S

2 THE COURT: General Motors, is everybody here on the  
3 9:45 or do we need to wait for people?

4 MR. BERZ: David Berz for the debtors. I'll get the  
5 other parties.

6 THE COURT: All right. Thank you. Okay. Well,  
7 Deltech is at 9:45 -- but I think GM may be short. And if it  
8 is, I want to get that taken care of.

9 Now, folks we're here ten minutes early on GM. Is  
10 everybody who would want to be heard on GM already here? Can  
11 you guys tell?

12 MR. BERZ: I believe so, Your Honor, unless there are  
13 people who are participating telephonically that I don't know  
14 about.

15 THE COURT: Well the only telephonic appearance I have  
16 is on Adelphia. So --

17 MR. BERZ: We have the other parties represented by  
18 counsel in here.

19 THE COURT: Okay. I'm aware of the stip that was  
20 provided to my chambers either last night or very early this  
21 morning, which seems inoffensive to me. But I see a lot of  
22 people here anyway, so help me understand where we are.

23 MR. BERZ: Good morning, Your Honor. David Berz;  
24 Weil, Gotshal & Manges for the debtors. We're here before you  
25 this morning to essentially set up a process for resolving the

1 stipula -- and presenting to you a stipulation and order  
2 regarding the motion of the RACER Trust that was filed last  
3 week. And the purpose of the stipulation is to set out a  
4 schedule of the disposition of the dispute that doesn't impede  
5 the dissolution of MLC, which is scheduled for as soon as  
6 December 15th, consistent with the master sale and purchase  
7 agreement of assets to what is now New GM and the plan.

8 And the stipulation has two important features.  
9 First, it sequesters or sets aside money in an escrow so that  
10 the money is protected, pending resolution of the dispute  
11 whether by court or some other means. And it also calls for or  
12 recognizes the need to identify a, if you will, successor or  
13 entity that will wind down the affairs of MLC, post-  
14 dissolution.

15 We have a number of not all that significant, but  
16 assets, that need to be bundled together, most likely in a  
17 trust, and we'll need some entity to manage those and also be  
18 responsible for overseeing how this dispute proceeds, if in  
19 fact it proceeds post dissolution.

20 The stipulation you have, Your Honor, reflects an  
21 agreement of the parties. But we have tweaked it, but very  
22 slightly, and we have those interlineations available. And --

23 THE COURT: By that, you mean since the last time I  
24 saw it?

25 MR. BERZ: Yes, since what was sent to your chambers

1 last night around 7:30 or 8 o'clock. And the two changes are  
2 really fairly straightforward. One, there's a -- in one of the  
3 where -- in the whereas clause that deals with the obligation  
4 of MLC to designate a post-dissolution entity to proceed with  
5 the litigation, it says that we will designate that entity or  
6 person before -- on or before dissolution.

7 And the second tweak to the document is that we have  
8 submitted the escrow agreement to JPMorgan Chase. They had  
9 approved one version of it, but there were some technical  
10 changes to it that went to them last night. I'm told by my  
11 colleagues that they don't have a problem with them. But the  
12 current stip contemplates that it would have been issued by  
13 now, so we're going to just add some language that says that  
14 the stipulation is subject to an approved escrow agreement from  
15 JPMorgan Chase.

16 THE COURT: Help me understand, Mr. Berz. As I  
17 understood the stip, it said that JPMorgan would give the money  
18 that it was holding in accordance to whatever the court order  
19 said. What's so complicated about that?

20 MR. BERZ: It's not comp -- it's just the mechanics,  
21 Your Honor, of getting JPMorgan to get back to us. I don't  
22 expect a problem.

23 THE COURT: Um-hum.

24 MR. BERZ: And we had hoped that we would hear back  
25 from them yesterday, but there were some -- as I say, some

1 information they needed and some technical changes.

2 THE COURT: That's all fine. If you see a weird  
3 expression on my face, it looks like this stip is the most  
4 plain vanilla stip I've seen in my legal career.

5 MR. BERZ: It is.

6 THE COURT: And I don't understand why it engendered  
7 having seven lawyers here today.

8 MR. BERZ: I can only speak for myself as responsible  
9 for putting it on the record, Your Honor.

10 THE COURT: Okay. Anybody else want to be heard on  
11 this?

12 MR. BLUMENTHAL: Your Honor, Michael Blumenthal from  
13 Crowell & Moring. We represent the RACER, which is the  
14 Revitalizing Auto Communities Environmental Response Trust,  
15 formally known as the Environmental Response Trust.

16 Your Honor, these negotiations for adjourning the  
17 hearing and entering into the stipulation have proceeded over  
18 the last week. We -- the one thing we would do is change  
19 paragraph 4, as Mr. Berz has indicated, to reflect that the  
20 escrow agreement is -- it would be under the terms of an escrow  
21 agreement to be entered into MLC, RACER and JPMorgan Chase,  
22 which we would hope would be today.

23 Assuming that there are no glitches with JPMorgan  
24 Chase accepting the escrow agreement that has been agreed upon  
25 between my firm and Weil, and submitted to JPMorgan yesterday,

1 I believe the stip and order that we've submitted to you, which  
2 we would just mark up to reflect the comments on the record,  
3 would be effective. The only thing I would ask, Your Honor --  
4 I agree that it is plain vanilla. I can't imagine JPMorgan  
5 Chase having any problems with it.

6 THE COURT: I mean, if you want to deposit the money  
7 in court, I'm fine with that as well. Are they getting paid  
8 for holding this money and for complying with a court order?

9 MR. BLUMENTHAL: There is an administrative fee, Your  
10 Honor, that MLC has agreed to pay the first year. If this goes  
11 on beyond that, which I would hope would not be the case, then  
12 RACER would pay those administrative fees.

13 We had frankly suggested at one point depositing it to  
14 the court. It was preferred that -- by MLC that an escrow  
15 arrangement be set up. We really had no problems. I had  
16 volunteered that the monies could be put into my IOLA account,  
17 subject to directive from Your Honor on a court order. As long  
18 as the money -- and 13.6 million will be deposited in escrow --  
19 is in escrow, we're okay with the adjournments that are set  
20 forth with a hearing date early February.

21 What I would ask Your Honor, is that if for whatever  
22 reason, an acceptable escrow agreement's not worked out, that  
23 we have a holding date for -- I don't know what your schedule  
24 is next Tuesday -- where we could come down here and then  
25 request you to order the money be put into either my firm's



1 IOLA account or the court -- or deposited with the court. I  
2 hope there won't be any further problems with this arrangement.

3 THE COURT: All right. Anybody else want to be heard?

4 Ms. Leary, good morning.

5 MS. LEARY: Good morning, Your Honor. Maureen Leary  
6 on behalf of the State of New York. My colleague John  
7 Dickenson from the State of New Jersey, just arrived. The PATH  
8 trains were down, so he's -- I'm apologizing for his brief  
9 lateness. I --

10 THE COURT: Well, actually, he's five minutes early.

11 MS. LEARY: We started early. And as Your Honor  
12 knows, and I appreciate your courtesies in allowing the Court  
13 (sic) to file its papers late. And I understand you need an  
14 electronic copy of the motion, and I will certainly get that to  
15 you.

16 I'm not going to second guess the trustee here, but I  
17 bring to the Court really what the states have been looking at  
18 from the sidelines. And I really want to try to shed some  
19 light on our perspective in what's going on here, because  
20 there's a lot of questions that remain unanswered. I'm not  
21 sure the stipulation is --

22 THE COURT: Pause please, Ms. Leary. I understand the  
23 underlying controversy. But I have more difficulty  
24 understanding what is such a big deal about teeing up the  
25 matter for a judicial decision and just taking the disputed

1 amount in controversy and throwing it in a pot, subject to  
2 further court order. Is that what you're addressing, or are  
3 you trying to give me a preview for matters that are going --

4 MS. LEARY: No.

5 THE COURT: -- to be litigated sometime down the road?

6 MS. LEARY: I don't think it would be fair to go to  
7 the merits today. So I'm not necessarily going to do that. I  
8 really would like sort of some answers of the Court to see if  
9 we can get some answers. I have -- we have not really been a  
10 party to any of this. But we do see, as I set forth, some  
11 level of dollars being spent from the trust, that are frankly  
12 quite scarce.

13 And the trustee has been forced to do that because of  
14 the dispute, and in good faith, has done it. And I -- when I  
15 heard about a stipulation, I was very excited, but then I found  
16 out it was just a stipulation to punt. And I wasn't that  
17 excited about that, because what that entails is more  
18 litigation, another entity, more expense, more complications.  
19 And frankly, I see potentially, a mess at this Court's door,  
20 and -- that involves everybody, and lots of lawyers and so  
21 forth.

22 So you know, I just looked at this -- I had to go in  
23 the office this morning at 5:30 because this stipulation came  
24 in at 8 last night. And now I don't even have the most recent  
25 version. But it would be great if I did.

1           The biggest thing, I look at this and see that you  
2     know, a) you don't have the escrow agreement; but there's a  
3     party or parties that are interested in opposing the motion. I  
4     don't understand what that means. It might mean that there's  
5     going to be a new entity created that will oppose the motion or  
6     respond to it or negotiate or something. I'm not really clear  
7     on what that means.

8           And frankly, does the plan envision the creation of  
9     another entity if the debtor -- does it authorize that, if the  
10    debtor hasn't wrapped things up? And then I see a big push  
11    into 2012, potentially all during that year for this to be  
12    litigated before the trust ever gets its money.

13          So I'm puzzled about this, and really don't know how  
14    long it takes. And I'm just really interested, on behalf of  
15    the states, in protecting the trust and in getting some level  
16    of efficiency. If we need the Court to decide the motion,  
17    let's do it. Let's do it and be done with it, get the appeals.  
18    You know, it doesn't seem to make a lot of sense to me to  
19    unnecessarily complicate this.

20          And that's really, you know, sort of the nuts and  
21    bolts. There is a prejudice to the trust. I can tell you that  
22    there -- when we entered into the consent decree, we had an  
23    expectation. It's clear to me that there's a question about  
24    whether that expectation was met, whether we get got the  
25    benefit of the bargain. That clearly goes to the merits, but

1 there's so little money in the trust anyway that it needs more  
2 protection than this may necessarily do.

3 This is up to the trustee. But I bring the states'  
4 perspective today because of the fact that there's really very  
5 little money to do the job. It's not as if the federal  
6 taxpayer will be stuck at the end of the day when the trust is  
7 exhausted. The states will have to take on that task of  
8 monitoring, maintenance, operation, or whatever remedial work  
9 is not done.

10 So I'm really trying to protect the dollars, and  
11 that's essentially what I would hope ultimately will happen.  
12 If we're here in January and February and March, and all the  
13 lawyers in the room, this Court will see the kind of  
14 expenditure that the trust is being forced to make, that I'm  
15 not sure was really necessary, particularly, in my view, that  
16 it would be very easy to have this Court issue a decision in a  
17 straightforward way before dissolution.

18 I'm not saying they don't get to respond. That -- but  
19 I think that they've had more than enough time. And I'm  
20 frankly surprised that it took until this morning to actually  
21 get -- two and a half weeks it takes to get a stipulation just  
22 to adjourn. Can you imagine what the negotiations are going to  
23 look like to try to get the money itself? And I hope the  
24 parties try to do that rather than litigating it. But, you  
25 know, it seems unnecessarily complicated, Your Honor. And

1 thank you for your courtesies.

2 THE COURT: Okay. All right. Anybody else want to be  
3 heard?

4 All right. The short answer is, the stip is approved.  
5 The thirteen million bucks will be put into an escrow, and if  
6 it can't be put into an escrow, I'll take it in the court  
7 registry or it might even be simpler, since I'm confident that  
8 any lawyer who appears in this court, if he takes money in his  
9 IOLA account, subject to an order of the Court, is going to  
10 comply with an order of the Court.

11 I'm surprised that we're going through all this shtus  
12 to put the money in a pot pending a further court order or that  
13 a bank is being paid for it, but if you want to do it that way,  
14 I guess I don't care. Just get it done. And if you can't get  
15 it done by Tuesday, I'll deal with this by conference call.  
16 But I think we've spent too much time and money on this  
17 already, folks.

18 Now the more important issue is teeing it up for a  
19 judicial determination. And consistent with the comments that  
20 Ms. Leary made on behalf of New York and I suspect other AGs  
21 who share her views, if you can't get this matter resolved, I  
22 want it litigated or otherwise teed up for judicial  
23 determination as cheaply and efficiently as possible.

24 Okay? Anything else?

25 MR. BLUMENTHAL: Your Honor, in that regard, I assume

1 that we will hopefully not need you on Tuesday. Could we have  
2 an early February hearing date, Your Honor?

3 THE COURT: I imagine. I don't know if I can do that  
4 without my courtroom deputy here. Oh, wait. A day has been  
5 set for GM on February 9th for some other GM stuff.

6 Mr. Berz, you're not one of the GM folks who regularly  
7 appears before me. Can you speak to your colleagues in terms  
8 of what other demands they're going to put on for me on  
9 February 9th?

10 MR. BERZ: When this started, everyone thought I would  
11 be the one in front of you the most over the course of this  
12 proceeding, because I had the responsibility with regard to the  
13 trust --

14 THE COURT: I'm not talking about this proceeding, I'm  
15 talking about --

16 MR. BERZ: -- but I -- if it's --

17 THE COURT: -- everything else in the GM case.

18 MR. BERZ: -- yes, I understand that. The 9th, I  
19 suspect the 9th will work.

20 THE COURT: All right. You can have February 9th.

21 Now, I'm going -- this is a contested matter, if I  
22 recall? Nobody bothered to bring on an adversary proceeding?  
23 I'm not sure if an adversary proceeding would have been  
24 required.

25 Under my case management order, I still require

1        declarations in lieu of direct in advance; designations of  
2        documents and any deposition testimony. I would have thought  
3        that this would be done on undisputed facts. But if it can't  
4        be, then you're going to have to get all of your discovery done  
5        between now and then. And you're going to have to tell me how  
6        much time I have to reserve for cross. Okay?

7                I won't require a pre-trial order. I don't think this  
8        is all that complicated. Okay. Anything else?

9                MR. BERZ: Thank you.

10               THE COURT: All right, have a good day.

11               (Whereupon these proceedings were concluded at 9:53 AM)

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I N D E X

RULINGS

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Stipulation between Motors Liquidation and	13	4
RACER is approved		



C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

Penina  
Wolicki

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Date: December 9, 2011